

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY RAY JOHNSON,

Petitioner,

v.

STUART SHERMAN,

Respondent.

No. 1:21-cv-01313-ADA-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(ECF No. 24)

Petitioner Billy Ray Johnson is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 18, 2022,¹ the assigned Magistrate Judge issued findings and recommendations recommending the petition be denied. (ECF No. 24.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within thirty days (30) after service. (*Id.*) Petitioner timely filed objections. (ECF No. 26.) Petitioner's objections largely restate his initial arguments to the California Court of Appeal, Fifth Appellate District; therefore, Petitioner's objections are unpersuasive. (*Id.*)

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¹ The findings and recommendations were signed on August 17, 2022, but were not docketed until August 18, 2022.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s
3 objections, the Court holds the findings and recommendations to be supported by the record and
4 proper analysis.

5 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
6 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
7 has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is
8 allowed in only certain circumstances. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003)
9 (*Miller-El*); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may
10 issue a certificate of appealability only if “jurists of reason could disagree with the district court’s
11 resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues
12 presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327;
13 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the
14 merits of his case, he must demonstrate “something more than the absence of frivolity or the
15 existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

16 Here, the Court finds that reasonable jurists would not find the Court’s determination that
17 the petition be denied debatable or wrong, or that the issues presented are deserving of
18 encouragement to proceed. Petitioner has not made the required substantial showing of the denial
19 of a constitutional right. Therefore, the Court declines to issue a certificate of appealability.

20 Accordingly,

- 21 1. The findings and recommendations issued on August 18, 2022 (ECF No. 24), are
22 adopted in full;
- 23 2. The petition for writ of habeas corpus is denied;

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- 1 3. The Clerk of Court is directed to close the case; and
- 2 4. The Court declines to issue a certificate of appealability.
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5 IT IS SO ORDERED.

6 Dated: November 2, 2022



UNITED STATES DISTRICT JUDGE

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